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A REPORT TO

THE COMMITTEE ON APPROPRIATIONS

U.S. HOUSE OF REPRESENTATIVES

on the

U.S. FOREST SERVICE

FOREST LEGACY PROGRAM

Surveys and Investigations Staff

June 2002

INVESTIGATIVE REPORT SUMMARY

SUBJECT: U.S. Forest Service Forest Legacy Program

SUBCOMMITTEE ASSIGNMENT: Interior and Related Agencies

REPORT DATE: June 14, 2002

SCOPE: This investigation addressed management and implementation issues associated with the U.S. Forest Service's Forest Legacy Program.

SELECTED FINDINGS:

During the first 8 years of the program, FY 1992 through FY 1999, Forest Legacy appropriations averaged $5.5 million annually and participation in the program grew from 5 to 17 States. Since then, funding has increased dramatically to $65 million in FY 2002, with the number of participants climbing to 31 States. For FY 2003, the Administration has requested almost $70 million and expects participation to reach 39 States.

While the Forest Legacy Program has enjoyed widespread support since its inception, inadequate Forest Service management and oversight of the program has hampered the program's success. For example, the West Branch project in Maine was originally advertised to the Congress as a 656,000-acre project. Having secured approximately $17 million in program funding, the State has twice-altered the deal and now intends only to acquire 47,000 acres. Additionally, a number of national program policies are unclear and are leading to confusion in the field, particularly in regard to project selection, cost shares, appraisal reviews, easement negotiations, and monitoring. Officials attribute the confusion to the Forest Service's failure to ensure the Program Implementation Guidelines provide sufficient guidance.

The Forest Service needs to establish meaningful performance measures for the Forest Legacy Program. Currently, the only stated goal of the program is to "slow the conversion of private forestland to non-forest uses." With that as the goal, any progress, however slight, is considered a success.

The Forest Legacy Program regional oversight structure is ill-equipped to manage growing project funding and State participation. By 2003, the number of regional program managers will be reduced from 10 to 7, although the number of participating States will increase from 31 to 39. Moreover, States will not be evenly spread across the remaining regional program managers. The Northeastern and Southern regional program managers collectively, for example, will be responsible for overseeing Forest Legacy implementation in 29 States.

The Forest Service's financial accounting system provides incomplete obligation and expenditure information on the Forest Legacy Program, resulting in the inability to accurately evaluate the use of Forest Legacy funds. The system, the Foundation Financial Information System (FFIS), is an off-the-shelf commercial system used by over 40 Federal agencies. It appears the problem is not with the FFIS, but with the Forest Service's failure to fully integrate it at all management levels and adapt it to meet program management information requirements. As a result, Forest Service staff are not using the FFIS for financial oversight and, thus, have no vested interest in ensuring the FFIS data is accurate, complete, and usable.

THIS RELEASE AUTHORIZED BY THE COMMITTEE

June 14, 2002

MEMORANDUM FOR THE CHAIRMAN

RE: U.S. Forest Service
Forest Legacy Program

By letter dated November 16, 2001, and received for action November 29, 2001, the Committee directed an investigation on the U.S. Forest Service Forest Legacy Program. The investigation has been completed, and the results are set forth in this report.

Respectfully submitted,

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Program Funding

The Forest Legacy Program, authorized at 16 U.S.C. § 2103c, is one of several Forest Service programs designed to assist private owners in managing their forestland. The program seeks to protect private forestland by providing funding to States to purchase the land, or interests therein, mainly through conservation easements, from willing sellers. During the first 8 years of the program, FY 1992 through FY 1999, Forest Legacy appropriations averaged $5.5 million annually, and State participation grew from 5 participants to 17. Since FY 1999, however, annual appropriations have increased dramatically, from $30 million in FY 2000 to $65 million in FY 2002, and the number of participating States has grown to 31. For FY 2003, the Administration has requested almost $70 million for the program.

Program Support

The Forest Legacy Program has enjoyed widespread support since its inception. Forest Service and State officials, as well as all of the major program stakeholders, such as private land trusts, timber corporations, and recreational groups, characterized Forest Legacy as a critical conservation tool that allows private landowners to maintain their interests in forestland while being compensated for their stewardship of the land. There also was a general consensus among all the major beneficiaries that the Forest Legacy projects have leveraged other Federal investments and represent Forest Legacy objectives well.

According to the national program manager in the Washington, D.C. Office, the Forest Legacy Program's progress is reflected in the rapid growth of both program funding and participation. The FY 2001 Forest Legacy national program report, documented this progress, stating that from FY 1992 through April 2001, 98 projects had been completed, conserving approximately 153,000 acres of forestland with a program investment of $40 million. State-designated program coordinators, however, identified notable errors throughout the national program report that call into question the program's actual record. Forest Service officials acknowledged the report's errors in such areas as acres protected and Forest Legacy investments and believe a new, on-line database, expected to be operational in FY 2002, will assist in better capturing critical project details.

Program Oversight

The national program manager has oversight responsibility for the Forest Legacy Program, but relies heavily on 10 regional program managers to oversee program implementation at the State level. According to the regional program managers, their ability "to know" the projects is accomplished through personal contact with the State program coordinators and project documentation. However, they each expressed concern that the growth in the number of projects and participating States makes it increasingly difficult to maintain sufficient detailed knowledge of each project. State program coordinators echoed this concern, citing in particular the significant workload of the regional program manager in the Northeastern Area. Currently, the Northeastern Area has 18

participating States and the regional program manager is responsible for over 50 percent of the projects in the Forest Legacy program, as of FY 2002.

The regional program managers also stated a number of Forest Legacy Program policies are unclear and are leading to confusion in the field, particularly in regard to: (1) calculation of cost shares the States must provide for each project, (2) appraisals and the review of appraisals, and (3) the negotiation and monitoring of conservation easements. These policies are outlined in the Forest Legacy Program Implementation Guidelines, which were first issued in 1992 and have been updated twice, most recently in May 2001. The most recent update, however, has never been finalized and, according to Forest Service officials, still needs further revision to reflect changes in the project selection process and clarification of cost share calculations and other program requirements. The Forest Service plans to publish an updated version in FY 2003.

Cost Shares

The authorizing legislation for the program states that the Federal share of program costs should not exceed 75 percent. While Forest Service and State officials generally concurred that, to date, meeting the minimum 25 percent non-Federal cost share requirement has not been an issue, they conceded that clarification is needed on how to properly calculate and apply the non-Federal cost share amount. Additionally, there is a lack of consistency across the regions as to the level of documentation required from the States to support their cost share estimates and, as project costs have increased, regional program managers expressed some concerns regarding the ability of the States to meet the cost share requirements.

The West Branch project in Maine highlights the need for Forest Service oversight of States' efforts to meet their cost share requirements. The project evolved from a $40 million project to purchase a conservation easement on 656,000 acres in FY 2000, to a $30 million, 333,000-acre project by the beginning of FY 2002. In June 2002, Maine proposed altering the scope of the project again, and now intends to use $20 million in Forest Legacy funds to purchase approximately 47,000 acres of forestland valued at $21 million. The impetus for this proposed project restructuring appears to be Maine's inability to raise the $10 million it committed to provide by December 2003. The proposed restructuring will require Maine to provide only $1 million, not $10 million, by December 2003 to purchase the 47,000 acres; will drop the State's total financial commitment to $6.6 million, the minimum cost share requirement on $20 million in Forest Legacy funds; and lays the foundation for extending the timeframe for providing the full cost share.

Several State officials identified the use of land donations as an effective means to meet cost share requirements. By encouraging landowners to donate a portion of the appraised value of the land or conservation easement as the non-Federal cost share, State officials believe they are leveraging the limited Forest Legacy and State funding, as well as ensuring the cost share will be available.

Appraisals

Authorizing legislation for the Forest Legacy program requires that the Federal Government pay only the fair market value for any interests in land acquired with program funds. It further states that these interests must be valued using Federal appraisal standards. To ensure the standards are met, a "qualified review appraiser" must review the appraisal. Since the introduction of the State grant option in the Forest Legacy Program, States—not the Forest Service—are responsible for ensuring the appraisals meet Federal standards. However, Forest Service appraisers expressed concern about the adequacy of the State appraisal and review process. These appraisers explained that the Forest Service has not provided necessary oversight for the Forest Legacy appraisal process and has not formally defined, in its implementation guidelines, the agency's own role in the process.

Conservation Easements

State program coordinators advised that most States use "boiler plate" conservation easement language for Forest Legacy acquisitions in their respective States to help simplify easement negotiations. Although regional program managers regularly review the final easement language to ensure the land will be managed in accordance with Forest Legacy objectives, they rarely provide input into the negotiation process. Moreover, regional program managers concede that they do not provide sufficient oversight as to the specific interests the easement seeks to acquire, protect, and manage. For example, a Forest Service appraiser pointed out that, in addition to protecting forestland from development, Forest Legacy easements have acquired or will acquire interests in a 192-acre gravel pit in New Hampshire, a 12,500-square foot conference center in Connecticut, and 9,200 acres of municipality-owned land that is already protected by State law in New Jersey.

State program coordinators also expressed concerns about the growing costs of easement monitoring. The program implementation guidelines require the States to monitor the easements and, at a minimum, prepare annual monitoring reports that must be made available to the Forest Service. However, all State program coordinators cited the long-term fiscal burden of monitoring large tracts as a developing issue.

Financial Oversight

While the national program manager is responsible for financial oversight of the program, he does not use the Forest Service's official financial management system, the Foundation Financial Information System (FFIS), to manage the program. Instead, he relies solely on funding allocation data. Because the FFIS is difficult to access for use in day-to-day operations, regional program managers rely on locally developed databases that they then reconcile to the FFIS, at a minimum, annually. Forest Service officials conceded, however, that regional program managers and financial managers do not integrate their information. Consequently, financial reports provided by the Forest Service during this investigation presented data that was often conflicting and, in the end, could not be reconciled adequately to provide a summary overview of the program's financial status.

Regional program managers agreed that there are several issues the Forest Service needs to address to ensure the financial management system can accurately track and evaluate the program's effectiveness. First, they stressed the need for the Forest Service to define what constitutes a Forest

Legacy "project." They explained that, currently, there are a number of differing interpretations of what constitutes a project, and without precise guidance, an accurate accounting of project costs cannot be assessed. Second, once the term "project" is defined, the Forest Service must address how grants should be structured. Regional financial managers explained that, without clear guidance on structuring grants for each project, the financial systems cannot be used to accurately track individual project progress.

Project Selection

Since the number of proposed Forest Legacy projects has always exceeded funding availability, the Forest Service has routinely prioritized projects. Historically, the Washington, D.C. Office has operated on the premise that every participating State should receive some funding; that there should be equity among the States. Beginning in FY 2002, however, Congressional guidance required the Forest Service to nationally rank projects for funding using a merit-based, fully competitive process. Therefore, a national panel was convened to select and rank projects for funding. Although the panel was able to agree on which projects should be funded within the limits of available funding, it could not reasonably distinguish the rank of one project relative to another on a national basis. Forest Service and State officials acknowledged that the selection process defaulted to one guided by State equity considerations and that the projects on the FY 2002 and FY 2003 project lists do not actually represent a national prioritization.

In addition, in FY 2002, the Forest Service allocated $500,000 in start-up project funds for each newly participating State, totaling $3.5 million. According to the national program manager, $500,000 was determined to be the amount required by a State to begin implementing a viable Forest Legacy Program. However, Forest Service officials explained, States do not have to provide a project proposal prior to receiving the allocation. State officials and regional program managers stated, in practice, this start-up funding is loosely regarded as discretionary funding for the States because any projects subsequently identified and funded by this allocation would not have been previously competed at any level within the Forest Service.

Several major challenges have been identified regarding the Forest Service's process for selecting and funding projects on a national basis: (1) the current strategy for the program, (2) large projects, (3) Congressionally earmarked projects, and (4) project readiness.

Program Strategy

The Forest Legacy Program strategy, in effect, is not a single overarching strategy, but rather separate strategies that are reflected in the diverse Assessment of Needs (AON) prepared by the 31 participating States. State program goals, according to State program coordinators, go beyond the mere protection of forests to include the enhancement of a range of public benefits inherent in forestland, such as ecological and recreation values, watershed protection, and timber production. According to Forest Service officials, these values add further complexity when assessing the relative worthiness of one project over another.

Without a guiding national emphasis, it is difficult to nationally compete projects for funding. As a result, the Forest Service has historically defaulted to a State's high priority projects if they meet the eligibility requirements in the State's AON. For example, in Maine, Forest Legacy funds help sustain the economic viability of the timber industry. In New York, program funds have helped build a regional trail corridor and expand a State park. In Oregon, Forest Legacy funds will purchase a small tract that is valued as a seed source for indigenous plants.

Although there is support for the development of a national strategy among program stakeholders, there is no consensus as to what the most appropriate strategy would be. Forest Service officials acknowledged that a clear national strategy is needed and are exploring the feasibility of defining and implementing such a strategy. They pointed out, however, that the program objectives identified by a new national strategy would have to be reflected in the State AONs and, if implemented, the States would need to revise these documents accordingly.

Large Projects

The growth in the number of large projects competing for funding has further complicated project selection decisions because current year funding requirements must be considered along with future funding expectations. And, although Forest Service officials contend that total acreage is not a significant determinant in selecting projects for funding, State program coordinators believe large projects to the extent they do not overwhelm available funds, fare better in the selection process. In addition, to the extent large projects cannot be fully funded or effectively funded in discrete affordable phases, it can lead to project funds being "banked." Banking results in the Forest Service accumulating funding over several fiscal years and is recognized as an inefficient use of Federal dollars.

Congressionally Earmarked Projects

In FY 2001, the Congress approved a $30 million program funding request with an additional $30 million for specifically earmarked projects. Similarly, in FY 2002, the Congress appropriated $65 million of which $42.9 million was earmarked for specific projects. Although most earmarks have been closely aligned with State priorities, they become problematic in cases where they are inconsistent with State initiatives. In addition, Congressional earmarking as a funding process competes with the Forest Service's process. Therefore, according to State officials, if this method of funding projects becomes dominant, States with the greater political clout are likely to engage in an earmarking war, and other States may withdraw from the program.

Project Readiness

In recent years, the Forest Service attempted to use project readiness as one of several criteria to select and fund projects. The Forest Service defines "ready" to mean there is local support for the project, it is known to be able to be completed, and the State has the means and capacity to finalize the project. However, Federal and State officials agreed a better definition of readiness would address the status of the easement negotiation or appraisal process because, if there are going to be implementation problems that would delay a project, they usually surface during these processes. However, changing the definition is difficult because States generally do not begin negotiations or appraisals until after Forest Legacy funds are committed.

I. INTRODUCTION

A. Directive

By letter dated November 16, 2001, the Committee directed an investigation of the management and implementation of the Forest Legacy Program by the U.S. Department of Agriculture's (USDA) Forest Service.

B. Scope of Inquiry

This investigation was based on interviews and documents provided by USDA, the Forest Service, and State officials responsible for managing the Forest Legacy Program in the Washington, D.C., metropolitan area, California, Georgia, Massachusetts, Maine, Maryland, Montana, New Hampshire, New York, New Jersey, Oregon, Pennsylvania, Tennessee, Utah, Vermont, Virginia, and Washington. Interviews also were conducted with landowners and non-profit partners participating in the program, including representatives from Plum Creek Timber Company, International Paper, The Nature Conservancy, Trust for Public Land, Land Trust Alliance, Pacific Forest Trust, The Conservation Fund, various State and local conservation organization groups, and individuals and organizations involved in the States' identification, selection, or management of Forest Legacy Program projects.

C. Background

Forestland, defined by the Forest Service as land that is or was at least 10 percent stocked with forest trees of any size, is the largest land use category in the United States. According to the Forest Service, approximately 747 million acres, or one-third of the more than 2.2 billion acres of land in the United States, is forestland. More than one-half of the forestland is privately owned by almost 10 million citizens, companies, or other entities.

U.S. forestland generates forest products and employment, as well as provides invaluable noneconomic benefits such as habitats for plants and animals, climate stabilization, watershed functions, recreational opportunities, and aesthetic enjoyment. The health and viability of the forestland, however, is threatened by population growth, sprawling urbanization, fragmentation, and non-forest development. While the publicly owned land, according to the Forest Service, generally is protected from conversion to non-forest uses, most privately owned land is not. USDA reported that, between 1992 and 1997, on average, almost 1 million acres of private forests were lost to development each year, a 70 percent increase over the previous decade.

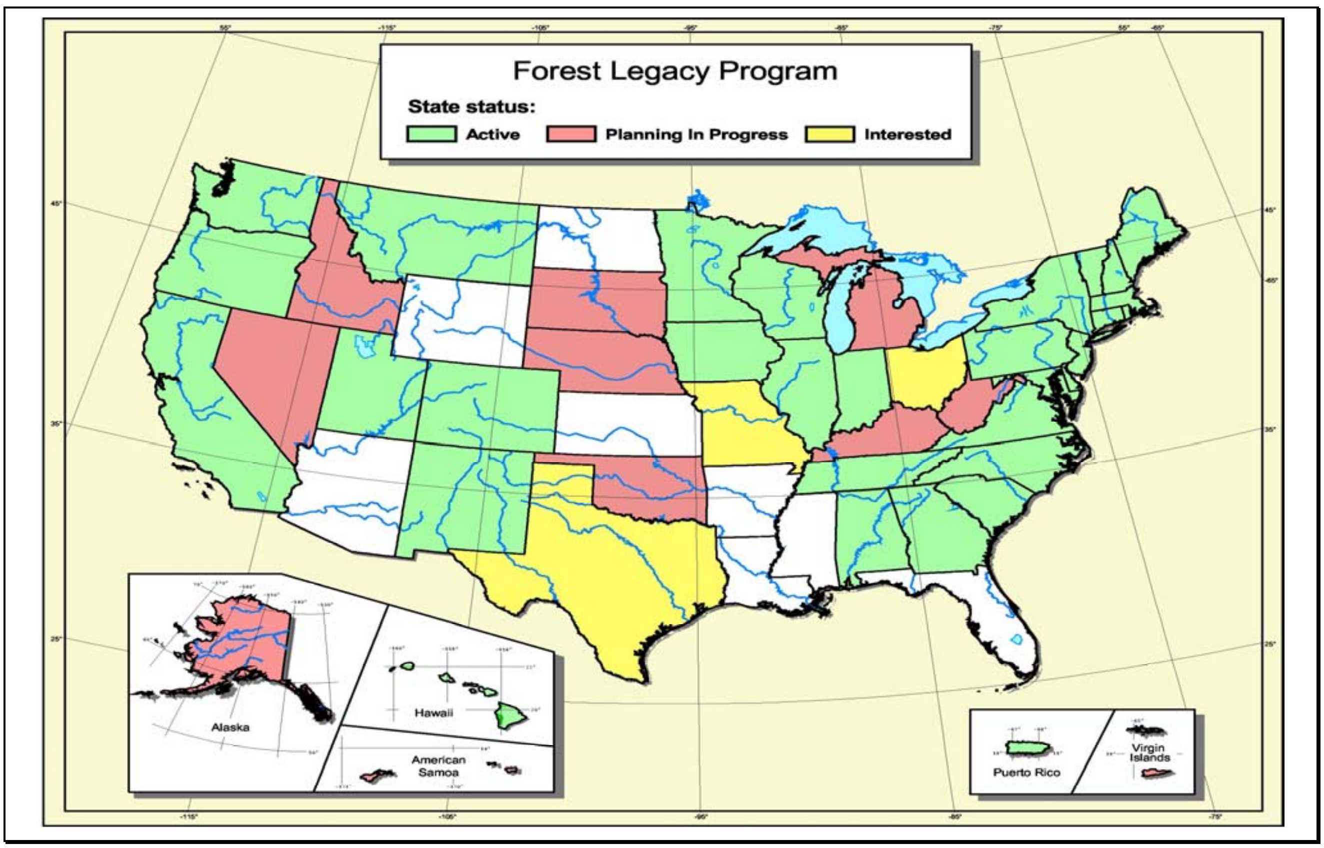
The impetus for the Forest Legacy Program was a 1990 Congressionally requested study on the status of the Northern Forest. The Northern Forest, located in New York, New Hampshire, Vermont, and Maine, is one of the largest tracts of continuously forested land in the nation, and it is 85 percent privately owned. The resulting report noted that private landowners, many of whom are large paper companies, were under increasing economic pressure to sell their forestland, and it recommended action be taken to protect the long-term integrity and traditional uses of the Northern Forest.

The Congress subsequently directed the Secretary of Agriculture to establish a Forest Legacy Program in furtherance of the Northern Forest study and to establish programs in the Northeast, Midwest, South, West, and the Pacific Northwest regions of the United States. The purposes of the program are to: (1) identify and protect environmentally important private forest areas threatened by conversion to non-forest uses, and (2) promote forestland protection and other conservation opportunities. Priority is given to forestland which can be effectively protected and managed and which has important scenic, cultural, fish, wildlife, recreational, riparian, and ecological values. According to the FY 2001 national program report, from FY 1992 through April 2001, the Forest Legacy Program completed 98 projects, conserving approximately 153,000 acres of forest with a program investment of $40 million. The program has grown considerably in recent years to an FY 2002 appropriated level of $65 million.

II. PROGRAM STRUCTURE AND FUNDING

A. Program Foundation

The Forest Legacy Program was established in 1990 through an amendment to the Cooperative Forestry Assistance Act of 1978, Public Law 95-313, codified at 16 U.S.C. 2101 et seq. The Forest Legacy Program is one of three Cooperative Forestry landowner assistance programs that focus Federal assistance on helping private landowners protect, improve, restore, and sustain private forests. The Forest Service, which is responsible for administering Cooperative Forestry programs, works in cooperation with voluntarily participating U.S. States and Territories. To date, 30 States and Puerto Rico are participating in the Forest Legacy Program, and in FY 2003, Forest Service officials expect an additional 7 States and American Samoa to join the program. The following map shows the currently participating States/Territories, as well as those currently planning to participate and those expressing an interest in participating.



The Forest Legacy Program achieves its goals of protecting and promoting the preservation of private forestland through either purchasing the land or purchasing interests in such land, usually through conservation easements. Conservation easements allow for the forestland to remain in private ownership but restrict development on the land to the degree necessary to protect the significant forest values. According to Forest Service and State officials, conservation easements generally are less costly than purchasing the land outright and just as effective in protecting against development. Forest Legacy conservation easements are held in perpetuity and are negotiated between the landowner and either the Forest Service or a State, depending upon which will hold title to the easement. To the extent practicable, according to Forest Legacy Program legislation, Forest Legacy funding is to be matched by at least a 25 percent non-Federal cost share.

B. Program Funding

The Forest Legacy Program received its first appropriation in FY 1992. From FY 1992 through FY 2002, a total of $198.7 million in no-year funds has been appropriated for the Forest Legacy Program. In FY 1995, $7.8 million of unspent funds were rescinded due to program implementation delays. In FY 2002, the Forest Legacy Program was the second largest Cooperative Forestry program, receiving $65 million, or 35 percent, of the $187 million Cooperative Forestry budget. For FY 2003, the Forest Service has requested $69.87 million for the program. The following table highlights the funds appropriated for the program by fiscal year.

Forest Legacy Program Appropriations FY 1992 through FY 2002 --- $ In Millions ---										
FY 1992	**FY 1993**	**FY 1994**	**FY 1995***	**FY 1996**	**FY 1997**	**FY 1998**	**FY 1999**	**FY 2000**	**FY 2001**	**FY 2002**
$4.40	$9.92	$6.95	$6.69	$3.00	$2.00	$4.00	$7.01	$29.93	$59.77	$65.00

* $7.8 million of unspent funds were rescinded in FY 1995. This rescission included all of FY 1995 funds, plus $1.112 million of prior-year funds.

According to Forest Service officials, the significant growth in Forest Legacy appropriations, beginning in FY 2000, is attributable primarily to a growing Congressional awareness of the program's potential and the identification of several large tracts of private forestland requiring Forest Legacy funding to protect them from conversion to nonforest uses.

C. Program Implementation

The Cooperative Forestry's national program manager for the Forest Legacy Program is located in the Washington, D.C., headquarters office, referred to as the Washington Office. The national program manager has program-wide management responsibility but relies heavily upon ten regional program managers to oversee program implementation in nine Cooperative Forestry geographic regions and in Puerto Rico. Regional program managers act as liaisons to State-designated program coordinators; providing technical assistance and overseeing State compliance with the Forest Legacy Program Implementation Guidelines. The guidelines, first issued in FY 1992, have been updated twice. The most recent revision, dated May 2001, has been in draft for over a year. Forest Service officials stated they are making additional changes to the draft and plan to finalize the guidelines in FY 2003. For example, the Forest Service plans to update the project selection process, as well as clarify cost share calculations and other program requirements.

Prior to FY 1996, the Forest Service was responsible for purchasing and holding title to Forest Legacy acquisitions. The Federal acquisition process, however, proved to be too cumbersome and time-consuming and led to acquisition backlogs. Forest Service officials cited the backlogs as the impetus for the Congressional program funding rescission in FY 1995. In FY 1996, the Congress amended the Forest Legacy Program legislation, Public Law 104-127, to allow the Forest Service to provide Forest Legacy grants to States to carry out the program. Under the State grant option, States assume responsibility for purchasing and holding title to Forest Legacy acquisitions. State acquisitions, however, must comply with Federal acquisition procedures. Currently, with the exception of Connecticut, Hawaii, and Massachusetts, all participating States use the grant option for all of their projects.

To participate in the program, a State must prepare an Assessment of Need (AON) plan in which it identifies the State's important private forests and the conversion threats they face. The AON also defines the State's need for a Forest Legacy Program, establishes the type of forestland eligible for program funding and the selection criteria, and delineates the geographic boundaries of the Forest Legacy Areas where the State plans to focus its forest conservation efforts. The AON must be reviewed by the Forest Service and approved by the Secretary of Agriculture before a State can participate in the program.

State-designated program coordinators work with willing landowners, land trusts, and other non-profit partners to identify and develop Forest Legacy projects that meet the objectives and goals of the respective State's AON. A Forest Legacy project describes the forestland to be acquired and the estimated direct and indirect costs associated with its acquisition. Annually, States submit prioritized lists of their proposed projects to the Forest Service regional program managers for funding consideration. For projects receiving Forest Legacy funding, according to program policies, States have 2 years from the date of the project grant to expend the funds and up to 5 years to provide the required cost share. The percentage of the cost share amount to total project costs varies on each project because, according to Forest Service officials, there is no requirement to provide a specified level of Federal funding. These officials explained that, while Forest Legacy funding levels generally vary between 50 percent and 75 percent of total project costs, some projects receive higher funding levels if the State is planning to use the value of donated land or conservation easements toward its cost share requirement. In such situations, the value of the donation is in addition to the value of the Forest Legacy acquisition. Also, because States hold title to Forest Legacy acquisitions under the State grant option, they are responsible for monitoring and enforcing conservation easements in perpetuity.

D. Project Selection Process

Historically, according to Forest Service officials, because the number of proposed Forest Legacy projects has always exceeded annual funding availability, the Forest Service has had to prioritize projects for funding. Although the annual project selection process has evolved over the years, Forest Service and State officials stated they generally have operated on the premise that every participating State should receive some project funding to maintain a viable and sustainable program, a premise often referred to as equity among the States. However, Congressional guidance and project earmarks, as well as a recognition that some projects are of higher priority than others, have tempered this approach.

Forest Service and State officials stated that the FY 2002 and FY 2003 project selection process differed from prior years because, for the first time, Congressional and Administration guidance required the Forest Service to use a fully competitive, merit-based process to nationally rank projects for funding. As in prior years, the Forest Service regional program managers first ranked the proposed projects in their respective regions. However, instead of the national program manager allocating project funding based upon the regional project lists, as was done for the past several years, the Forest Service convened a national panel to review and rank the projects. The national panel, composed of Washington Office officials, selected regional program managers, and a few State program coordinators, met for 2 days to review the proposed projects and agree on a final project list. Based on observing the selection process, it was noted that, although the national panel was able to agree on which projects should be funded within the limits of available funding, they could not distinguish the relative value of each project nationally. Beyond the two or three projects that the panelists could agree were exceptional, a defensible case could not be made for a national ranking for the rest of the projects. Washington Office officials explained they simply placed the projects in an ordered fashion to the best of their ability to meet the national ranking requirement.

Many Forest Service and State officials expressed frustration with the new selection process, and all acknowledged that the FY 2002 and FY 2003 project lists are not a true national prioritization. One Forest Service official explained that it was extremely difficult, if not impossible, for the national panel to distinguish the superiority of one project over another because the same ranking criterion was used for both the regional and national rankings, that is: (1) environmental/economic importance, (2) threat of conversion to non-forest uses, (3) strategic importance and proximity to previous conservation investments, and (4) project readiness. The Forest Service defines a project as "ready" when there is local support for the project, it is known to be able to be completed, and the State has the means and capacity to complete the project.

Observation of the FY 2002 project selection process also indicated that although the process was supposed to be fully competitive, from the beginning it was influenced by equity considerations, and as a result, every participating State received some project funding. Several Forest Service decisions ensured the equitable distribution of project funds. For example: (1) the national program manager instructed the regions to give preference to projects in States that had received less than $1 million in Congressional earmarks; (2) the national panel made its first project "cut" on a geographic rather than merit basis, allowing the Northeastern Area to submit 10 projects and the Southern and Western regions to submit 5 projects each; and (3) the panel allocated $500,000 to each of the newly participating States, which totaled $3.5 million in FY 2002.

According to Forest Service officials, the $500,000 allocated to newly participating States was determined to be the amount required to begin implementing a viable Forest Legacy Program. Forest Service and State officials indicated that this "start up funding" is loosely regarded as discretionary in that the projects chosen by the States need not pass through the Forest Service's regional rankings. These officials conceded that, consequently, there is a risk that the funding will be used for projects that would not have competed well in the regional rankings. In Oregon, for example, State officials are considering using the $500,000 toward the purchase of two parcels—a 2-acre parcel for $100,000, and 3.7-acre parcel for $475,000. According to Forest Service data, these tracts represent the smallest project tracts proposed under Forest Legacy. Oregon officials acknowledged that these two projects are not good examples of how Oregon plans to implement the Forest Legacy Program, but they felt pressure to identify projects quickly and these were ready.

E. Project Selection and Funding Challenges

Forest Service and State officials acknowledged there are several major challenges associated with both nationally prioritizing projects and subsequently selecting projects for funding. Among the challenges cited were the current Forest Service program strategy, project diversity, project readiness, large projects, and Congressionally earmarked projects.

1. Forest Service Program Strategy

Forest Service and State officials concurred that the current Forest Service strategy for implementing the Forest Legacy Program does not lend itself to nationally prioritizing projects. According to Forest Service officials, the Forest Service's program strategy is not a single strategy, but rather 31 separate strategies that are reflected in the AONs prepared by the 31 participating States. These officials explained that the Forest Service policy has been to encourage all States to participate, regardless of the status or size of their private forestland, and minimal restrictions have been placed on the type of projects eligible for funding. Moreover, according to one regional program manager, because the Forest Service has an informal policy of supporting the State's highest project priorities, it does not scrutinize their relative "worthiness." At best, the Forest Service has ensured proposed projects meet State eligibility requirements.

Each AON, although reviewed and approved by the Forest Service as supporting Forest Legacy goals, reflects the uniqueness of an individual State's private forestland in terms of use, ownership patterns, type of threat, environmental importance, State priorities, and citizens' demands. For example, according to Forest Service officials, State AONs place varying levels of emphasis on logging, public access, location, total acreage, and tree density. Because every project is developed within the context of an approved State AON, according to one State program coordinator, without an overriding national strategy, it is very difficult to compete projects for funding on a national level. Therefore, the Forest Service historically has defaulted to equity considerations.

When asked whether a national Forest Legacy strategy could be developed, most State officials and private partners acknowledged it could, but there was no agreement on what would be the most appropriate strategy. These officials explained there are varying opinions about the purpose and objectives of the Forest Legacy Program. For example, there is a continuing debate on what the program should be protecting and where. State officials in Maine, New Hampshire, New York, and Vermont argue that because protection of the Northern Forest was the impetus for the Forest Legacy Program, a significant portion of program funds should be directed to its protection. Officials from other States disagree, arguing that program legislation specifically directs that a national program be created. There also are diverse opinions on whether the Forest Legacy Program should focus on: (1) small forestland owners versus timber corporations, (2) the Eastern United States where there are fewer National Forests, (3) forestland managed for timber production, (4) urban forests, (5) land that is in imminent danger of conversion to non-forest uses, or (6) land that will be threatened with development in the distant future but can be acquired now at less cost.

Washington Office officials stated they are exploring the feasibility of developing a national program strategy. They opined that, in the past, when appropriations averaged $5.5 million annually, there was little choice but to divide the funding equitably to the participating States. However, now that appropriations have reached $65 million annually, they believe there is an opportunity for the Forest Legacy Program to fund larger projects and a possibility of developing a strategy to accomplish them. Forest Service officials stated that, if a national Forest Legacy strategy is adopted, many States would need to revise their AONs accordingly.

2. Project Diversity

In accordance with program guidelines and the legislative intent of the Forest Legacy Program, each State has established program goals and an acquisition strategy that reflect the uniqueness of its private forestland, population, and demographics. State program goals, according to State program coordinators, go beyond the mere protection of forests to include the enhancement of a range of public benefits inherent in forestland, such as ecological and recreational values, watershed protection, and timber production. As a consequence of the diversity in State programs, according to Forest Service officials, there is diversity in the types of proposed projects, and it makes comparing projects for national ranking challenging.

A review of completed projects, funded projects in varying stages of acquisition, and proposed projects revealed the diversity of State program goals and strategies. For example, in Maine, Forest Legacy funds purchase land that helps sustain the economic viability of the timber industry. In New York, program funds have helped build a regional trail corridor and expand a State park. In Oregon, Forest Legacy funds will purchase a small tract that is valued as a seed source for indigenous plants. States such as California, Hawaii, Maine, and New Hampshire have focused on rural tracts of forestland; whereas, Maryland, Oregon, and Washington have received funding for forestland in more urbanized areas.

Not only is there diversity in what type of forestland is being protected, there also is wide diversity in the size and cost of projects. According to State program coordinators, the Forest Service has provided no guidance to States regarding preferred project sizes or acreage costs. As a result, the Forest Legacy Program has funded and is poised to fund a wide range of landscapes from a 2-acre tract in Oregon to a 500,000-acre tract in Maine, with Federal costs ranging from $60 to $50,000 an acre. The following table highlights a sample of those projects.

Forest Legacy Program Completed, Funded, and Proposed Projects FY 1992 through FY 2003				
Project Name	**State**	**Acreage**	**Estimated Forest Legacy Funding Required**	**Estimated Forest Legacy Cost Per Acre**
West Branch	Maine	333,000	$20,050,000	$60
Connecticut Lakes	New Hampshire	171,000	$12,000,000	$70
Plum Creek	Maine	500,000	$56,000,000	$112
Pippin Tree	Massachusetts	73	$1,500,000	$20,500
Fawn Lilly	Oregon	2	$100,000	$50,000
Hogan Butte	Oregon	50	$2,500,000	$50,000

3. Project Readiness

Since 1996, with the advent of the State grant option, project readiness has been one of the criteria the Forest Service has used to select projects for funding. According to Forest Service officials, this criterion helps ensure funding is allocated to the top priority projects closest to completion, i.e. property acquisition. However, both Forest Service and State officials admitted that judging the readiness of a proposed project could be difficult because, for most proposed projects, States have not begun serious conservation easement negotiations with the landowner nor appraised the property. These officials explained that if there are going to be any project problems that may delay or terminate a project, they usually surface during these preliminary stages of project development.

Forest Service and State officials concurred, however, that it could be problematic if States were required to have easement negotiations or appraisals underway before submitting projects for funding consideration. While State officials conceded that funding projects before they are ready risks tying up funds that could be used to complete other high priority projects, they stated they would be reluctant to invest substantial effort or money in projects before they have some assurance Forest Legacy funding will be available. Doing so may give landowners false hopes and waste limited State money if the project is not selected. However, several Forest Service and State officials agreed that the project selection process used for the FY 2003 budget request, as discussed below, may allow for a reasonable compromise between the Forest Service's need to know if projects are ready for funding and States' reluctance to invest early in project development.

Historically, the Forest Service has conducted its project selection process after receiving the annual program appropriation. For FY 2003, however, the Forest Service conducted the project selection process in January 2002 before submitting the budget request. State officials agreed having a project on the proposed funding list increases their confidence that the project would be funded in FY 2003. If the new process works, some State officials advised they might be more willing to begin developing proposed projects before Forest Legacy funding is finalized 9 or more months later. According to one Forest Service official, if States were to proceed with developing the projects during the Congressional deliberation period, the Forest Service would have more concrete information on a project's readiness before it allocates the funding after the beginning of the fiscal year. This official speculated that acquisition negotiations might have collapsed on some projects, thus requiring the Forest Service to reallocate funds to other projects. However, State efforts could have brought other projects closer to completion, allowing Forest Legacy funds to be expended in a more timely fashion.

4. Large Projects

Both Forest Service and State officials concurred that, although protecting large parcels of forestland is desirable, large projects present particular funding difficulties. Currently, according to Forest Service officials, projects costing more than $5 million generally are funded over several years so as not to take a significant portion of the program funding available in a given year. States currently use two strategies for funding such large projects. The more common strategy, according to Forest Service officials, is for State program coordinators to work with landowners to divide large properties into several discrete "affordable" projects that can be funded and completed independently of each other over 2 or more years. This is referred to as "project phasing." The Thompson-Fisher project in Montana is an example of a "phased" project. The $11.8 million provided to date has been allocated to three phases, all of which are now completed, with Montana holding title to conservation easements on the property. Montana officials stated that an additional $3 million is required to complete the fourth and final phase of the project. Shown in the table below are four of the largest Forest Legacy projects and their current funding status.

Forest Legacy Program Funding
Selected Large Funded Projects
FY 2000 through FY 2002

Project Name	State	Acreage	Funding Through FY 2002	Remaining Funding Required	Total Estimated Funding
West Branch	Maine	333,000	$17,200,000	$ 2,850,000	$20,050,000
Connecticut Lakes	New Hampshire	171,000	3,600,000	8,400,000	12,000,000
Thompson-Fisher	Montana	170,000	11,790,000	3,000,000	14,790,000
Tomahawk Woods	Wisconsin	70,000	5,000,000	13,500,000	18,500,000
TOTAL		744,000	$37,590,000	$27,750,000	$65,340,000

The second strategy States use is to annually resubmit projects for funding consideration, receiving some funds each year, until sufficient Forest Legacy funding has been allocated to purchase the property or conservation easement. While grant regulations do not allow States to accumulate funds from one year to the next until enough money is available, the Forest Service, in effect, “banks” the funds on behalf of the State. For example, the Forest Service has banked over $17 million over the last 3 fiscal years for Maine’s West Branch project and it has proposed allocating an additional $2.85 million in FY 2003. Although Maine initially separated the West Branch project into two phases, when the first phase did not close on time and insufficient Forest Legacy funding had been allocated for the second phase, the Forest Service began banking the project’s funds. Maine officials currently estimate they will be able to close by December 2003; 4 years after receiving its first Forest Legacy grant for the project.

Forest Service and State officials advised that both strategies can be problematic. Phasing projects, while not committing the Forest Service to funding all phases, in effect, "mortgages" future Forest Legacy appropriations because Forest Service officials stated that they feel a sense of commitment to continue funding these ongoing projects. Banking for large projects, Forest Service officials acknowledged, ties up millions of dollars that could be used to close other projects. When questioned about alternative funding strategies, several State program coordinators wondered whether such expensive projects are simply too costly for the size of the Forest Legacy's annual appropriations. These officials commented that the Forest Service must selectively and sparingly choose among the expensive projects so as not to risk mortgaging a significant portion of future Forest Legacy appropriations. Several State program coordinators suggested that the Forest Service submit a separate budget request for large projects. Other State and Forest Service officials suggested the large projects should have higher non-Federal cost share requirements, perhaps a 50 percent cost share.

5. <u>Congressionally Earmarked Projects</u>

Although there was limited Congressional earmarking of funds for specific projects prior to FY 2001, for both FY 2001 and FY 2002, earmarking significantly shaped the program, according to Forest Service and State officials. In FY 2001, 50 percent of the $60 million Forest Legacy appropriation was earmarked for specific projects and, in FY 2002, over 64 percent of the $65 million appropriation was earmarked. Forest Service and State officials, credited Congressional earmarking for "growing" the Forest Legacy Program from its previous $5.5 million average annual appropriation level to $65 million in FY 2002. However, they expressed the belief that Congressional earmarking of funds is beginning to compete with the established Forest Legacy project selection process and could harm efforts to compete projects nationally for funding.

Forest Service and State officials believe that, if the goal of the Forest Legacy program is to fund only the top priority projects, Congressional earmarking of funds can work against that goal. These officials explained that, while most Congressional earmarks have been closely aligned with State project priorities, not all were the States’ number one priority. More than one-half of the projects earmarked by Congress were ranked second or lower on the respective State’s priority list. Moreover, according to Forest Service officials, several earmarks were made for projects not on State priority lists. The earmarking of funds for projects that are not a State's top priority occurs primarily because non-profit partners and other program participants lobby for their own projects which may not be the State's top priority project.

In FY 2002, many States that received Congressional earmarks were effectively excluded from receiving funding for other projects because the Forest Service instructed regions to give priority in the rankings to projects from States that had received less than $1 million in Congressional earmarks. This meant that, for some States, their top priority project was not funded. Moreover, because some of the projects did not go through the Forest Legacy process, Forest Service officials stated they did not always match project-funding requirements. For example, three FY 2002 projects received Congressional earmarks less than the amount the States needed to complete the projects and were in what the Forest Service called a "fund or fail" status. As a consequence, the Forest Service had to allocate an additional $3 million to them out of its regular appropriations.

Congressional earmarks may further complicate the program's efficacy by placing undue pressures on the negotiating process between the State program coordinator and the landowner. State program officials stated, under normal conditions, if negotiations fail to yield an amicable agreement between buyer and seller, both parties are free to abandon the negotiations. However, when earmarking is involved, both regional and State program officials acknowledged their ability to "walk away" from negotiations with the landowner may be diminished.

III. PROGRAM OVERSIGHT

A. Program Reporting

While the Forest Service has not established quantitative goals for the Forest Legacy Program, according to Forest Service officials, it tracks and reports statistics by project, and State, as well as program-wide to demonstrate program accomplishments. For each project, the Forest Service tracks the: (1) number of acres protected from conversion to non-forest uses, (2) estimated total value of the interests acquired, (3) Forest Legacy payment, (4) project status, and (5) geographical information.

Notwithstanding the Forest Service's data collection efforts, a comparison of the project information reported in the FY 2001 national program report with data obtained during State visits revealed significant factual errors in virtually every data category and for every State, thereby calling into question the accuracy of the entire report. Forest Service officials acknowledged the report's inaccuracies but contend that future reporting will be improved following the implementation of a centralized project database. According to these officials, the new database, projected to come on-line by the end of FY 2002, will contain more detailed project information than was previously available for preparing national reports. Forest Service and State officials are to have different levels of access to the new database and updating responsibilities. Currently, however, the Forest Service does not plan to integrate any financial management capabilities into the system, other than to reflect project grant amounts.

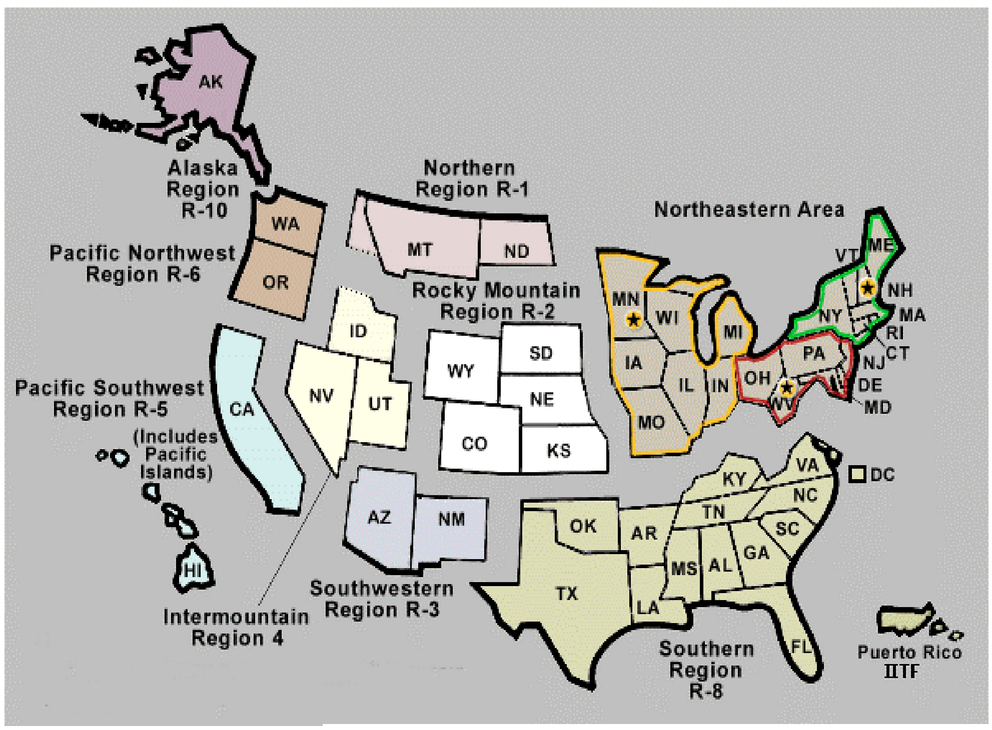
B. Forest Service Oversight Responsibilities

The national program manager in Washington, D.C., has program-wide management responsibility, but relies heavily upon regional program managers across the country. Regional program managers are responsible for ensuring States are implementing Forest Legacy in accordance with the program implementation guidelines. They keep informed about State activity primarily through project documentation provided by State program coordinators and through ad hoc conversations. In addition, most regional program managers visit participating States annually at a minimum and, in accordance with program policy, conduct State and regional reviews once every 5 years. State reviews consist of 1- or 2-day visits by Forest Service officials from the Washington Office and the regions, as well as other interested parties. The regional program manager prepares a brief report, citing both program accomplishments and recommendations, for review by the Washington Office and for the benefit of other States.

C. Program Oversight Challenges

Forest Service and State officials advised they are pleased with program implementation to date and believe the regional program managers have exercised appropriate oversight. While regional program managers did not report being overwhelmed by their Forest Legacy responsibilities, some expressed concern that those responsibilities could become unmanageable with the continuing growth in the number of participating States and projects being implemented.

Currently, only two of the regional program managers work full-time on the Forest Legacy Program—the regional program managers in the Northeastern Area and the Southern Region. The eight other regional program managers divide their time between the Forest Legacy Program and other Cooperative Forestry programs. These regional program managers reported that the amount of time they must spend on the Forest Legacy Program directly correlates with the number of participating States and projects in their region. With the recent program growth, they are beginning to find it more difficult to balance their Forest Legacy responsibilities with their other program responsibilities. The following map shows the Forest Service's geographic regions.



The Northeastern Area is the largest Cooperative Forestry region, which is composed of 20 States. The Forest Service currently has two full-time staff overseeing the Forest Legacy Program in the Northeastern Area, a regional program manager and an assistant regional program manager. While highly complimentary of the Northeastern Area regional program manager's work, State officials and non-profit partners believe the workload requires more staff. They noted that 18 out of the 31 participating States are in the Northeastern Area and, more importantly, that over 50 percent of the active Forest Legacy projects are in the Northeastern Area. One State program coordinator commented that it is impossible for the regional program manager to visit each State annually and to visit the sites of all proposed projects. This latter effort, he believes, should be required of every regional program manager because they are responsible for regionally ranking proposed projects and making the case for their funding at the national level. Another State official commented that, because of the size of the Northeastern Area, there are significant differences between the States in terms of forest type, ownership patterns, and threats they face. The official believes these differences make ranking projects in the Northeastern Area much more complicated than in the smaller regions where there is more commonality. Several of the State program coordinators in the Northeastern Area suggested dividing the region into three smaller regions.

In addition to perceived shortfalls in Forest Service staffing in the Northeastern Area, State program coordinators and non-profit partners noted that similar staffing problems could surface in the Southern Region. The Southern Region is the second largest Cooperative Forestry region, composed of 13 States. Currently, only six of these States are participating in the Forest Legacy Program; however, six others have expressed interest in participating. The regional program manager for the Southern Region acknowledged the need for additional staffing support if many more States participate.

The national program manager acknowledged that regional and Washington Office staffing levels will need to be periodically adjusted to reflect the Forest Legacy workload and that he plans to review both. He also noted two recent staffing changes:

- Establishment of a new full-time program manager position in the Portland, Oregon, regional office to oversee program implementation in Regions 5, 6, and 10—which previously managed projects in California, Hawaii, and the Pacific Islands; Oregon and Washington; and Alaska, respectively. The current regional program manager positions in these regions will remain involved in the Forest Legacy Program, but their responsibilities will be refined.

- The merging of Forest Legacy oversight responsibilities in Regions 1 and 4, headquartered in Montana and Utah, respectively. In these two regions, there currently are two participating States and two States preparing to participate. Rather than having a regional program manager in each region, the Region 4 program manager in Utah will oversee the Forest Legacy Program in both.

D. Oversight of Selected Project Elements

Although both Forest Service and State officials are satisfied with Forest Legacy Program implementation at the State level, they acknowledged a number of oversight challenges exist, particularly in the areas of non-Federal cost sharing, the appraisal review process, and conservation easement negotiations and monitoring. According to these officials, these challenges have emerged primarily due to insufficient program guidance. With the growth in program funding and the number and complexity of projects, these officials expressed concerns that, without clear policy guidance, these oversight challenges will hamper program progress.

1. Cost Shares

Both Forest Service and State officials generally concurred that meeting cost share requirements, to date, has not been an issue nor is there difficulty in assessing the values of cost shares. According to Forest Service officials, the sum of all cost shares program-wide has substantially exceeded the 25 percent minimum requirement. In its FY 2003 budget justification, the Forest Service reported that, on average, each Federal dollar leverages an equal amount in non-Federal contributions to the program. Although that claim for the program overall could not be verified due to inaccuracies in Forest Legacy reporting, an analysis of completed projects in selected States did show cost shares of more than 25 percent in those States.

a. Cost Share Calculations

The Forest Legacy Program legislation states that project costs are to be shared among the participating entities, including the Federal Government, State government, and landowners and, as previously noted, "to the extent practicable, the Federal share of total program costs shall not exceed 75 percent * * * ." Forest Service officials stated that they calculate the Federal funding limitation on the total estimated project cost, which includes both the actual cost of the property or conservation easement as well as the indirect acquisition costs such as the costs of title searches and appraisals. They also stated that the amount of the non-Federal cost share is stipulated in the grant documentation signed by the States and that they monitor compliance with the grant conditions through annual State reporting.

An analysis of grant documentation showed that the Forest Service is using three different calculations for determining the non-Federal cost share:

1. The cost share was calculated by dividing the amount of the Forest Legacy grant by .75 and subtracting the grant amount. For example, if a $600,000 grant were provided, the cost share would be $200,000 ($600,000 / .75 = $800,000 - $600,000 = $200,000). This methodology results in the Forest Legacy grant equaling 75 percent of the combined grant amount and cost share.

2. The cost share was calculated as the difference between total estimated project cost and the amount of the Forest Legacy grant. This methodology may or may not result in an appropriate cost share calculation. If the amount of the Forest Legacy allocation is equal to or less than 75 percent of the estimated project costs, the methodology accurately calculates the non-Federal funds required to complete the project. However, if the grant amount provided was more than 75 percent of the total estimated project cost, as can occur when a State plans to use the value of separately donated lands towards meeting the cost share, the calculated cost share will be less than 25 percent.

3. The cost share was calculated by multiplying the amount of the Forest Legacy grant by 25 percent. For example, if a $600,000 grant were provided, the cost share would be $150,000. This methodology results in the Forest Legacy grant equaling 80 percent of the combined grant amount and cost share because the Forest Service is using the Federal Grant as the basis for its calculation rather than total project cost.

When the issue of varying cost share methodologies was brought to the attention of the national program manager, he acknowledged the problems associated with the latter two methodologies and admitted that they could place Forest Legacy funding at risk of exceeding the

75 percent funding limitation. He also acknowledged regional program managers should have exercised greater oversight over grant documentation to ensure the cost shares were appropriately calculated. He agreed to amend the program implementation guidelines regarding cost share calculations and to include examples of proper calculations to reduce the chance for errors.

b. Assessing the Value of Cost Shares

According to a number of State program coordinators, calculating the value of what is counted toward meeting the cost share generally is precise and definitive. For most projects, the cost share requirement has been met through State employee time; direct costs incurred in acquiring the property as documented by project bills and transaction closing settlement statements; and, landowner donations of a portion of the appraised value of the property being acquired.

In addition to direct project costs, States also can use the value of donated land or conservation easements toward cost share requirements if the donations meet Forest Legacy criteria. The values assigned to these donations, according to State program coordinators, are based upon appraisals. According to program implementation guidelines, for these donations to be counted for cost share purposes, the donation must have occurred during the 5-year grant period of the project for which it is being applied, and it must not have been previously credited towards any other Forest Legacy cost share. Some State officials believe these guidelines have been punitive in their application. They explained that they might work for years encouraging landowner donations and then find themselves unable to use the full donation value if the "timing" of the donation does not coincide with open Forest Legacy grants. For example, Utah officials reported that the State has received almost $15 million in land donations but has been allowed to apply less than $9 million toward cost shares. According to Forest Service officials, about one-half of the participating States reported using portions of the value of donated lands or conservation easements toward meeting their cost share requirements.

State officials also noted the program implementation guidelines need to address several donation issues: (1) whether the value of donated property can be distributed among more than one open grant to meet cost share requirements and (2) how to account for a large landowner donation on a phased project if it is received during the first phase but is intended to meet the cost share requirement for the entire project, including future grants. The national program manager acknowledged the need to provide more comprehensive guidance to ensure regional program managers can exercise sufficient oversight on cost share issues.

c. States' Ability to Raise Cost Shares

According to Forest Service officials, from an oversight perspective, they have not had reason to be concerned about any State's ability to meet its proposed cost shares on Forest Legacy projects. The amount of the cost share is written into each grant agreement that then becomes a commitment on the part of the State. According to these officials, projects are funded with the assumption that the States will be able to provide the required non-Federal cost share. However, State officials explained that they often do not begin fund raising for a project until after they receive a Forest Legacy grant. Moreover, they advised that they frequently do not have all the non-Federal funding sources identified until near the time the funds will be needed.

The growth in Forest Legacy appropriations and the increasing number of larger projects have increased State cost share requirements and, as a result, Forest Service officials acknowledged they will need to give more oversight to State plans for meeting those requirements. Encouraging landowners to donate a significant portion of the cost share requirement is an approach some State program coordinators believe maximizes both Forest Legacy and State funds. Utah officials explained that landowners understand that there are more properties eligible for the Forest Legacy Program than funding available and that their projects will be more favorably considered if they are willing to donate a portion of the appraised value of the land or conservation easement. As a result, Utah officials report a backlog of almost fully cost-matched projects pending Forest Legacy funding.

The West Branch project in Maine illustrates why Forest Service oversight of States' efforts to meet their cost share requirements is essential. The West Branch project, first funded in FY 2000, had evolved from a $40 million project to purchase a conservation easement on 656,000 acres into a two-phased $30 million project of 333,000 acres by the beginning of FY 2002. The $30 million was to be composed of $20 million in Forest Legacy funding and $10 million from Maine and other program partners. In May 2002, Maine officials merged the two phases into a single project and committed to a December 2003 closing date. At that time, Maine officials acknowledged they had raised only a small portion of the $10 million they were committed to provide. Forest Service officials, however, expressed confidence in Maine's ability to meet its financial commitment yet they admitted they had never required Maine to provide its financial plan. Moreover, Maine had previously failed to raise the limited cost share required to close on the project's initial phase in FY 2001. One month later, in June 2002, Maine proposed restructuring the project yet again. Rather than using the estimated $20 million in Forest Legacy funding toward purchasing a conservation easement on 333,000 acres, Maine proposes applying the funds towards purchasing title to 47,000 acres, estimated to cost $21 million. To fulfill the State's cost share requirement, the Forest Society of Maine has proposed to purchase, and donate to the Forest Legacy Program, a $12 million conservation easement on 282,000 acres of the West Branch property.

The impetus for the proposed restructuring appears to be Maine's inability to meet its $10 million cost share by December 2003. The proposed restructuring will require Maine to provide only $1 million, not $10 million, by December 2003 to purchase the 47,000 acres; will drop the State's total financial commitment to $6.6 million, the minimum cost share requirement on $20 million in Forest Legacy funds; and lays the foundation for extending the timeframe for providing its full cost share. Due to lack of Forest Service oversight, this new scheme could potentially result in the $20 million Forest Legacy investment protecting significantly less acreage than originally expected.

2. Appraisals

On all Forest Legacy projects, an appraisal must be prepared that conforms to Federal appraisal requirements contained in the Uniform Appraisal Standards for Federal Land Acquisitions. Further, each appraisal must receive an independent review by a qualified review appraiser to ensure the standards are met. Key among these standards is the stipulation that Federal payments to the landowner will not exceed the fair market value of the property.

State program coordinators stated they contract with experienced and reputable private appraisers for both the appraisal and the independent appraisal review for Forest Legacy projects. Furthermore, the officials stated they were generally satisfied with the quality of the appraisals and reviews and confident that they met Federal appraisal standards. The State program coordinator in Vermont pointed out that the State was as concerned about the integrity and the credibility of the appraisals as was the Federal Government because, after all, the State must match at least 25 percent of the result.

Notwithstanding the comfort level expressed by State officials, a number of Forest Service appraisers expressed concern over the quality of the appraisals conducted for Forest Legacy projects. According to these officials, they have reviewed many Forest Legacy project appraisals, at the request of the regional program manager, and have noted some of them have not met Federal appraisal standards. In each case, the State review appraiser had certified that the appraisal met Federal standards. One State program coordinator admitted that the Forest Service review appraiser had rejected 14 out of 15 appraisals submitted by his State (only some of which were Forest Legacy appraisals) because they did not meet Federal standards.

According to the Forest Service's chief appraiser, the Forest Service has not established a policy regarding when Federal appraisers should be required to review Forest Legacy appraisals to ensure they meet Federal standards. He stated that regional program managers, operating without adequate guidance from the Washington Office, have implemented a number of different policies regarding the use of Federal review appraisers. In the Northeastern Area, the regional policy is for the Forest Service to review all appraisals valued over $1 million. In other regions with fewer projects, regional program managers are requesting a review of all project appraisals.

Regional program manager policies also differ on the level of involvement of Forest Service appraisers in the Forest Legacy Program. Some regional managers involve the Forest Service appraisers in the appraisal planning process with State officials and others do not. In the words of one senior review appraiser, "If we're going to be involved in Legacy projects, we should be involved from the start." According to the Forest Service's chief appraiser, however, requiring Forest Service appraiser involvement in the Forest Legacy Program is difficult because there is a shortage of such appraisers. He explained there are at present only 42 review appraisers remaining in the Forest Service nationwide, at least half of which are nearing retirement and they are fully engaged in their National Forest System responsibilities. Any work they conduct on behalf of the Forest Legacy Program is on top of this workload.

3. Conservation Easements

According to Forest Service officials, negotiating the details of conservation easements is the responsibility of the designated State lead agency. Regional program managers stated they primarily review conservation easements to ensure they contain required Forest Legacy language and stipulations. Some regional program managers stated they try to keep up to date with the progress of negotiations in order to preclude future problems. Most Forest Service officials stated the amount of their oversight depends upon the expected complexity of the conservation easement, the number of non-profit partners, and resource objectives involved.

Most State program coordinators advised they, or another State official, generally meet with the owner to negotiate the terms of the conservation easement. Other States, such as Maine and Tennessee, rely on land trusts and other conservation groups to conduct or facilitate the negotiation of the easement stipulations with the landowner. Although most States and non-profit partners report they use their own "boiler-plate" conservation easement as an initial template, they explained that the terms of conservation easements vary, reflecting the uniqueness of the specific land parcel. For example, conservation easements can require or limit public access to the property, allow or prohibit activities such as logging or hunting, or allow limited building on certain acreage under easement. Most State program coordinators advised that State attorneys review all conservation easements to ensure they comply with State law and policy.

A review of selected Forest Legacy conservation easements identified some with unusual stipulations and one that protected what a Federal review appraiser considered already protected land.

- The Ossippee Mountain project in New Hampshire, which closed in FY 2002, purchased a conservation easement on 4,800 acres for $1.72 million; the Forest Legacy Program provided $1.4 million. However, included in the 4,800 acres is a 192-acre gravel mining operation. According to the appraisal, over 50 percent of the purchase price, $900,000, was for the conservation easement on the gravel pit.

- The Tree Tops property in Connecticut is described as roughly 111 acres of residential forestland, assessed at approximately $13 million. The property includes a 12,500-square foot corporate conference center, currently being used by the Trust for Public Land, as well as a number of other housing units. A Forest Service review appraiser questioned why Forest Legacy funding would be used to protect a private conference center. The Forest Service’s Office of General Counsel located in Milwaukee, Wisconsin is reviewing the language and provisions of the conservation easement.

- The Newark Watershed project in New Jersey is a six-phase project aimed at purchasing conservation easements on approximately 19,000 acres of forested watershed owned by the City of Newark. In the first two project phases, New

Jersey used State funds to purchase conservation easements from Newark on 9,700 acres. The State has purchased an additional 9,200 acres from Newark, using $5.79 million in Forest Legacy funds, for the subsequent three phases. For the final phase, the Forest Service has included $3 million in its FY 2003 budget request. A senior Forest Service appraiser, however, noted that the Newark watershed acreage already was protected from development by State law and that Newark must obtain State waivers to sell the conservation easements. This appraiser also stated, "It is pure speculation to assume that this property can be conveyed and developed at this time." He explained that the property has steep terrain, soil problems, and wetlands; all of which call into question whether the property is "threatened" by developers and in need of Forest Legacy protection. Forest Service officials defended using Forest Legacy funds for the Newark Watershed property, saying there is "no faith or assurance that these lands will remain in a protected state." Both New Jersey and Forest Service officials commented that the watershed is a financial burden to the City of Newark because it must pay property tax on it to the local municipalities.

Forest Service officials acknowledged they needed to provide more detailed guidance on what should and should not be permitted in conservation easements. One State program coordinator suggested that the Forest Service include examples of Forest Legacy conservation easement language on a program website so States can easily learn from each other. He mentioned that conservation easement language is an ever-evolving process, reflecting lessons learned.

4. Monitoring of Conservation Easements

According to the program implementation guidelines, the government entity—local, State, or Federal—holding title to the property acquired under the Forest Legacy Program must monitor and administer those interests in perpetuity. Monitoring Forest Legacy conservation easements should occur periodically, but not less than annually, and consist of a visual inspection of the property, documented by a written report to explain the condition and any departure from the baseline documentation. Under the current guidelines, monitoring may be assigned to other parties to include land trusts and other conservation groups; however, the unit of government holding the conservation easement has the responsibility to enforce the conservation easement.

State program coordinators advised they have had no major problems to date keeping up with all of their monitoring, reporting, and enforcement requirements. However, a number of State officials expressed concern that the amount of land under their responsibility could, in the future, exceed the resources available to complete the required monitoring. As the Forest Legacy Program grows, so does the acreage under easement and the funding required to monitor it. Vermont officials stated that the amount of land they are required to monitor has quadrupled in recent years and this growth may eventually exceed State staffing and funding capacity. Current Forest Legacy guidelines, however, allow only the monitoring costs incurred during the 5-year project grant period to be counted by States as part of their cost share. Furthermore, Forest Service officials acknowledged they currently do not consider State monitoring capability when selecting projects for funding.

Another concern expressed was the potential for more complex and lengthy easements in the future and the monitoring difficulties they present. On average, according to State program coordinators, Forest Legacy easements are 10 to 15 pages in length. However, at least one easement under negotiation is almost 50 pages. State officials acknowledged that complex easements are difficult to monitor in two respects. First, complex easements increase the monitoring costs because they require more detailed site visits and documentation. Secondly, in the opinion of these officials, complex conservation easements are more likely to be inadvertently violated because future landowners, and those tasked with monitoring, would not be as familiar with all of the nuances of the easement language.

5. Program Integration

The Federal Land and Water Conservation Fund (LWCF) is primarily used for the acquisition of land for recreational use such as National Forests, parks, and ball fields. LWCF includes a State grant component that can be used, where appropriate, in combination with Forest Legacy funds to purchase lands or easements on lands. The use of Forest Legacy funds in combination with LWCF funds is usually dependent upon the land-use objectives on the targeted property. According to State program coordinators, LWCF funds have been used on a few Forest Legacy projects where the project objectives were compatible with both Forest Legacy and LWCF goals. For example, New Jersey used Forest Legacy and LWCF funds, as well as funds from the Trust for Public Land and other non-profit partners, to purchase a 300-acre tract adjacent to a State wildlife management area.

Many conservation organizations hold significant conservation easements themselves and are closely coordinated with the States regarding overall conservation strategies and future land acquisitions and easements. Forest Service officials, in the Washington Office and the regions, believe that the partnerships formed with land trusts and other non-profit organizations have been critical to the program's success. These partners, according to Forest Service and State officials, frequently are more effective than government agencies in working with landowners and may be depended on by the States to help in meeting cost share requirements. Further, a land trust can often use its own financial resources to secure an important acquisition opportunity, before it is lost, more quickly than government agencies. This can result in protecting the land until Federal or State funds are available.

IV. FINANCIAL MANAGEMENT

A. Program Funding Allocation

The Washington Office, based upon inputs from the regional program managers, annually determines the allocation of Forest Legacy funds. A portion of the funds is allocated to the Washington Office and regional offices for program management. The remaining funds are allocated, through the regional offices, to the States for: (1) program administration—usually a minimum of $10,000, (2) development of AONs, and (3) project acquisitions. These funds are provided to the States through grants. Forest Service officials stated that, historically, 5 percent or less of the annual Forest Legacy appropriations have been used for program management, at both the Federal and State levels, and the remaining 95 percent or more has been used for the direct purchase of lands or interests in lands.

According to regional program managers, they generally allocate Forest Legacy funds to the States in accordance with the Washington Office allocation plan. However, they can exercise some flexibility in adjusting State administrative and project grant amounts. The regional program managers stated they work with regional Forest Service grants managers to establish the State grants and they monitor grant activity through the regional financial system, discussions with State program coordinators, and through required State-prepared annual grant reports.

B. Forest Service Financial Management System

The Forest Service has been using the Foundation Financial Information System (FFIS) for agency-wide financial management since FY 2000. The FFIS is an off-the-shelf commercial financial management system also used by approximately 40 other Federal agencies. The Forest Service is using the FFIS to maintain obligations and expenditure data for the entire Forest Legacy Program, including data for each State grant. However, the Forest Service uses two systems for grant payment authorization and disbursement. With the exception of the Northeastern Area, the FFIS is used as the grant payment authorization system and the National Finance Center for grant disbursement. For the Northeastern Area, the Forest Service has contracted with the Department of Health and Human Services (HHS) to provide both of these functions. In addition to the FFIS, regional program managers use locally developed financial systems to track program funds.

C. Analysis of Program Allocations and Expenditures

An analysis of the FFIS information for FY 2000 and FY 2001, Washington Office funding allocation information, regional office financial system reports, and selected grant documentation identified pervasive discrepancies in the financial information reported for the program—discrepancies that Forest Service officials acknowledged and were unable to reconcile. Because the FFIS contains both inaccurate and incomplete program information, actual obligations and expenditures could not be determined and a comparison between planned allocations and actual use of Forest Legacy Program funding could not be made. The following are a few examples of the financial discrepancies:

- For FY 2001, the FFIS reported the Forest Service obligated approximately $62.9 million in grants to the participating States. Regional office financial systems, however, reported providing States only approximately $58.7 million. For the Northeastern Area, the amount reported for State grants differed between the FFIS, HHS grants payment system, and the regional office financial system: $33.8 million, $30.1 million, and $24.7 million, respectively.

- For FY 2000, the Washington Office reported it allocated $552,000 for regional and State program management requirements; however, the regional offices' financial reports reported receiving approximately $970,000.

In addition to the discrepancies among the various sources of financial data for the program, analysis of all available Forest Service financial information also highlighted problems with:

- Tracking deobligated project funds: The Northeastern Area could not document the use of $1.305 million which it deobligated from two Maryland projects in FY 2001.

- Tracking the financial status of individual projects: Many State grants are for more than one project or have been amended to include project funds from more than one fiscal year.

- Weaknesses in grant management: In FY 2002, Minnesota officials withdrew $1.6 million in prior-year project grants without using the funds for the planned acquisitions. Only after this issue was pointed out to Forest Service officials did they request Minnesota to return the grant funds, with accrued interest. According to Forest Service officials, Minnesota has returned the funds.

D. Financial Management Challenges

Forest Service officials acknowledged the financial management problems and attributed them to several factors, including: (1) failure to adapt the FFIS, the official financial system, to meet program management information requirements, (2) lack of integration between program and financial management information in the Washington Office, and (3) failure to provide appropriate guidance on project definition and grants management.

Program managers in the Washington Office and the regions stated that, while they submit required information to the FFIS, they use local "unofficial" systems for day-to-day management and financial oversight for multiple reasons. Primary among those reasons, according to these officials, is that the FFIS does not meet their program management requirements. For example, regional program managers stated they need a system they can quickly and easily access that identifies the grant initiation and expiration dates, dollar amount, cost share requirement, payment amounts and dates, and grant balance. Regional program managers also stated that the FFIS is not “user-friendly” and contains inaccurate and incomplete information. As a result, regional program managers stated they rely on their local financial management systems. Several regional program managers noted that, although they attempt to reconcile their systems with the FFIS at least annually, the FFIS does not always correct its information. Thus, the FFIS and the regional systems remain out of balance. Forest Service officials acknowledged that having two grant payment systems also has contributed to discrepancies between the FFIS and regional systems.

Several Forest Service officials acknowledged that the Washington Office has not integrated program and financial management information for managing the Forest Legacy Program. The national program manager stated that he manages the Forest Legacy Program with funding allocations and admitted that he had never requested FFIS expenditure data. As a result, he acknowledged he was unaware of the financial discrepancies between the FFIS and regional accounting systems, he could not document the amount of carry-over funding from prior years, and he could not address any program expenditure questions.

Regional program managers acknowledged the Washington Office needs to provide more comprehensive guidance on project and grant management. Guidance is needed not only to ensure consistency among regional financial systems but also to ensure automated databases can be used to track the financial status of individual projects. Specifically, they noted that the Forest Service needs to define the term "project" for accountability purposes and to develop policies on structuring State grants.

Regional program managers explained, "All projects are not equal." Even though most projects are comprised of a single parcel of land, other projects are comprised of multiple tracts of land with multiple owners and are actually "project areas" where a State is pursuing a number of acquisition opportunities in a geographic area. Managing by project areas, while facilitating a State’s ability to move project funds between tracts of land if a negotiation fails on one property, does not allow the individual purchases to be easily tracked through grant expenditure data. Regional program managers also noted the Forest Service needs to clarify how the regions should report on phased projects. Currently, some regions report the status of phased projects as one project, while others report on the progress of each phase as a separate project.

In addition, regional program managers stated there is no Forest Service policy regarding how to structure Forest Legacy grants when a State is allocated funding for more than one project. Currently, some regions combine funding for multiple projects into a single fiscal year grant, some regions amend existing grants with new project funding, and others combine project and administrative funds into a single grant. One regional program manager stated that the Forest Service had encouraged grant managers to reduce the number of grant transactions. Such efforts, according to regional program managers, thwart their ability to use either the FFIS or regional financial accounting systems to monitor individual project progress.

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